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## May It Please the Court

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# May It Please the Court



*First-place winners congratulate each other.*

**S**tacy Glover and Sandra Wallace-Smith won first place on Saturday, Nov. 11, in the 1989 Charles S. Desmond Memorial Moot Court Competition. Contenders Kevin Doyle and John Walsh, also impressive, came in second. All the judges described the contest as "extremely close — the closest we've ever heard."

The two top teams emerged victorious over 50 other teams made up of 100 second- and third-year law students. State Supreme Court Justice John J. Callahan,

summing up the feelings of the justices who volunteered to judge the final arguments, said, "I predict a bright future for the four of you."

This year's hypothetical case revolved around the medical problems of a 30-year-old woman, Darlene E. Sawyer, who suffers from cancer. The illness is a result of her mother having ingested DES — a synthetic estrogen — when pregnant, to prevent a miscarriage. Sawyer sued the U.S. government and 11 pharmaceutical companies who manufactured DES at the

time it was prescribed for her mother.

Two legal issues were involved. The first concerned whether procedures used by the U.S. Food and Drug Administration (FDA) in approving DES for use as a miscarriage preventive could be characterized as a "discretionary function" under the Federal Tort Claims Act. If so, the FDA would be free of liability for harm caused by DES.

The second issue involved the constitutionality of the New York State Toxic Tort Revival Statute, which was passed in 1986.

This statute opened a one-year window of liability for the manufacturers of five specific toxic substances—one of which was DES. Petitioners asserted this window was necessary and appropriate when dealing with substances whose harmful latent effects rendered the standard New York statute of limitations inadequate. Respondents contended that the statute violated their right to due process and equal protection under the Constitution.

Judging the final round were: Hon. Matthew J. Jasen '39, a former State Court of Appeals justice, now retired from the judiciary, who acted as chief justice for the final round; Hon. Michael F. Dillon '51, presiding justice of the State Supreme Court, Appellate Division, Fourth Department; Hon. John J. Callahan '54, senior associate justice of the State Supreme Court, Appellate Division, Fourth Department; Hon. M. Dolores Denman '65, associate justice of the State Supreme Court, Appellate Division, Fourth Department; and Dean David B. Filvaroff.

Before announcing the winners, Justice Dillon invoked the memory of the late Justice Desmond. "This is my law school," said Dillon, quoting the late chief judge of the New York State Court of Appeals, who was also an adjunct law professor at UB. For more than 25 years, "The Chief," as he was known, traditionally opened moot court with that expression of pride in the institution and in its students, Dillon recalled.

"I graduated from this law school in 1951," said Dillon. "I have an affection for it that I believe is unsurpassed by anyone else, because I know what this wonderful institution is doing for our profession and our community, in gearing up young people to be lawyers—and leaders—in our community. The four people we heard today, in my view, are destined for leadership roles. You were excellent. Your arguments were superior in many instances to those that we hear in the appellate division."

An additional 18 students from the Desmond Moot Court Board competed in national competitions hosted by law schools across the country, frequently

placing in the top one-third of the competitors. More than a dozen other students worked on preparation and administration. Together, the various contests reflect a growing student involvement in this traditional law school experience.

Among the national competitions UB entered last year were: the American Bar Association's National Appellate Advocacy Competition, in constitutional law, at UB Law School; the Samuel Polsky National Moot Court Competition, in criminal law and criminal procedure, at Temple University Law School; Cordozo/BMI Competition, entertainment and communication law, at Benjamin Cordozo School of Law, Yeshiva University; Wagner Memorial Competition, in labor law, at New York Law School; Bioethics Moot Court Competition, in property and bioethics law, at Georgetown Law Center; University of Cincinnati Moot Court Competition, in products liability law, at University of Cincinnati Law School; and the Albert R. Mugel Tax Competition—named for a UB tax law professor—at UB Law School.

Two UB students—Tom Smith and Shawn Griffin—took Best Oralists awards in the Cordozo and Mugel competitions, respectively.

Designed to provide law students with appellate courtroom experience before graduation, the Desmond is probably the

most familiar of UB's moot courts, but it isn't the only one. The Phillip C. Jessup International Law Moot Court, and the Frederick Douglass Moot Court, though lesser known, also have their advocates.

The Phillip C. Jessup International Moot Court program at UB, now in its third year, is among the largest of the international moot court competitions. Private international law based on the Oxford University model is a major focus this year, according to Jennifer L. Krieger, chair. The Jessup recently sent teams to a regional competition in Camden, N.J., and to the Faskin & Calvin International Oral Advocacy Competition in Kingston, Ont.

The Frederick Douglass Moot Court Competition concentrates on constitutional law and issues that affect minorities. The regionals were held in Buffalo at the Hyatt Regency Hotel during the 21st annual Northeast regional conference of the Black Law Students Association.

Two UB students, Emmanuel Nneji and Diana Harris, won the regional event and went on to compete in the national Douglass contest in Miami. Although Georgetown Law Center took the national prize, Nneji said, "The competition was intense, but the experience was extremely rewarding." ■



*Desmond Moot Court judges hear the arguments.*